D.B. Civil Special Appeal (Writ) No.1315/2005
(Krishi Upaj Mandi Samiti Versus Shanker Lal Meena & Others)

Date of Order :: 29th October, 2007

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE R.S. CHAUHAN

Mr. Inderjeet Singh for the appellant
Mr. Ajay Gupta for the respondent no.1

P.C.

Appeal is admitted. Mr. Ajay Gupta waives service for respondent no.1. The service on respondents no. 2 & 3 is dispensed with being formal parties.

2. The counsel for the appellant and the respondent no. 1 are ad-idem that the controversy raised in the appeal is concluded by the judgment of this Court given on 19th March, 2007 in D.B. Civil Special Appeal (Writ) No. 424/2005-Anaz Mandi Chandpole Vyapar Versus State of Rajasthan & Others and other connected matters.

3. The Division Bench in the afore-referred judgment observed thus:

> "The crux of the dispute lies in the question of preference, if any, to be given to the traders of Chandpole market vis-a-vis Lal Kothi, Sodala and Surajpole markets doing business in

notified agricultural produce. It is true that in the notification of acquisition, mention was made of Chandpole Mandi but from the record it appears that the Government had taken a policy decision to shift all Anaj Mandis

to the outskirt of the city. We do not find any distinction between the cases of traders doing business in notified agricultural produce at Chandpole and those doing similar business in notified agricultural produced at Lal Kothi, Sodala or Surajpole in principle. The problem has arisen on account of the fact that number of shops constructed by the Market Committee so far – said to be 284 – is short of the number of traders/applicants subject of course to their inter se placement in the merit list, that is, the marks awarded to them on the basis of volume of turnover, market fee and the age of licence.

In our view, if the traders of these markets including Chandpole stand on par in all respects, there cannot be any classification inter se. The only thing required is to identify the trader/traders for allotment of the shop first. To this extent, we may clarify that traders of Chandpole market may be allotted shop(s) first, and thereafter allotment may be made to the traders of Lal Kothi, Sodala and Surajpole markets.

As a matter of fact, we are inclined to think that if the number of shops constructed so far is short of applicants – who are otherwise eligible for allotment, the respondent

authorities may consider allotting space on which the concerned traders may construct shops on the terms and conditions which may be decided by the Market Committee. It goes without saying that the allotment of such space will be made to traders/applicants who are comparatively lower in merit and priority. It may be that some of them are equally placed in all respects; in that case, allotment may be made by lottery.

As regards traders doing business in non-agricultural produce, it was argued that the non-agricultural produce such as cattle feed is made from notified agricultural produce, and therefore it is not correct on the part of the respondents to treat them as traders dealing in non-agricultural produce and deny them space/shop.

As seen above, the Rajasthan Agricultural Produce Markets Act has been enacted to regulate “buying and selling of agricultural produce”, among other things. Section 4(2) of the Act, also, prohibits “purchase or sale” of any agricultural produce specified in the notification. Thus if a particular commodity is sold which is not included in the list of agricultural produce in the Schedule but is made from the notified agricultural produce, it prima facie appears that the business would involve purchase of agricultural produce. The Act relates to “purchase or sale” and if purchase of agricultural produce takes place and the same is converted into non-notified agricultural produce and then sold, we do not think, the traders should be denied allotment only on the

ground that the produce sold by them is not a notified agricultural produce.

Having made these observations we leave it to the Market Committee to determine whether a particular commodity – in the business of sale of which the trader is engaged – should be allotted shop/space or not. However, we must clarify that the question of allotment of shops/space to such traders would arise only after the shops/space to traders doing business in notified agricultural produce is complete and all of them have been allotted shops/space.

The directions of the learned Single Judge stand modified in the manner and to the extent mentioned above.

The respondents, particularly Krishi Upaj Mandi Samiti are directed to consider the claims of the applicants in the light of the directions and observations made hereinabove."

4. The present appeal is disposed of as per the judgment dated 19th March, 2007. The order of the Single Judge stands modified accordingly. No costs.

R.S. CHAUHAN,J. **R.M.LODHA,J.**